



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 14, 2016

PUBLIC ACCESS OPINION 16-010
(Request for Review 2016 PAC 43297)

FREEDOM OF INFORMATION ACT:
Duty to Respond to FOIA Requests

Ms. Lauren FitzPatrick
Education Reporter
Chicago Sun-Times
350 North Orleans, 10th Floor
Chicago, Illinois 60654

Ms. Jaculin Jerman Milovich
Senior Assistant General Counsel
Chicago Public Schools, Law Department
1 North Dearborn, 9th Floor
Chicago, Illinois 60602

Dear Ms. FitzPatrick and Ms. Milovich:

This is a binding opinion issued by the Attorney General pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2014)). For the reasons discussed below, this office concludes that the Chicago Public Schools (CPS) violated section 3(d) of FOIA (5 ILCS 140/3(d) (West 2014)) by failing to comply with, deny in whole or in part, or otherwise appropriately respond to a FOIA request submitted by Ms. Lauren FitzPatrick.

BACKGROUND

On July 1, 2016, Ms. FitzPatrick, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to CPS via the FOIA Center on its website,¹ seeking:

¹See Freedom of Information Act (FOIA) Requests, Chicago Public Schools, http://www.cps.edu/About_CPS/Departments/Law/Pages/FOIAResult.aspx (last visited Sept. 21, 2016).

Ms. Lauren FitzPatrick
Ms. Jaculin Jerman Milovich
November 14, 2016
Page 2

Since July 1, 2015: Copies of all invoices to date from the Crowe Horwath LLP. Copies of records of payments by CPS/BOE^[2] to Crowe Horwath LLP. I want the actual bills as well as proof of payment by the district. The most recent contract or letter of engagement for Crowe Horwath LLP. No excel sheet of costs, please, unless in addition to actual bills and payment proof.^[3]

On that same date, Ms. FitzPatrick received an automatic e-mail reply from the CPS FOIA Center assigning her FOIA request a reference number and stating: "Your FOIA request has been received and is being processed."⁴ The CPS automated e-mail additionally stated:

Due to the high volume of FOIA requests received by CPS, we are unable to fulfill your request within 5 business days. Section 3(e)(vi) of FOIA permits CPS to extend the response time to 10 business days if a request cannot be fulfilled in 5 business days without unduly burdening or interfering with the operations of the District. We hereby extend the response time to your FOIA request to 10 business days in accordance with 5 ILCS 140/3(e)(vi).

If further time is needed to assemble and copy all documents responsive to your FOIA request, we will contact you with a time estimate and a request to extend.^[5]

On August 1, 2016, thirty-one days after submitting her FOIA request to CPS, Ms. FitzPatrick e-mailed a Request for Review to the Public Access Bureau alleging that CPS improperly denied her request by failing to respond.⁶ Specifically, she alleged: "CPS confirmed receipt the same day, assigned case number N001883-070116[,] and automatically asked for the

²"BOE" presumably refers to "Board of Education."

³FOIA request from Lauren FitzPatrick to Chicago Public Schools FOIA Center (July 1, 2016).

⁴E-mail from cps@mycusthelp.net to L. (July 1, 2016).

⁵E-mail from cps@mycusthelp.net to L. (July 1, 2016).

⁶E-mail from Lauren FitzPatrick, Education reporter, *Chicago Sun-Times*, to Sara[h] Pratt, * * * Public Access Counselor, Office of the Attorney General (August 1, 2016).

Ms. Lauren FitzPatrick
Ms. Jaculin Jerman Milovich
November 14, 2016
Page 3

10 business [days] allowed under the law. By my count, those 10 days ended two weeks ago. [No one] from CPS has provided any update."^{7,8}

On August 4, 2016, the Public Access Bureau forwarded a copy of the Request for Review to CPS and asked CPS to advise this office whether it had responded to Ms. FitzPatrick's FOIA request; if it had not yet responded to Ms. FitzPatrick, this office asked CPS to do so and to provide this office with a copy of its response.⁹ CPS did not respond to the Public Access Bureau's August 4, 2016, correspondence. As of the date of this binding opinion, this office has not received confirmation that CPS has responded to Ms. FitzPatrick's FOIA request. On September 30, 2016, the Public Access Bureau properly extended the time within which to issue a binding opinion by 30 business days pursuant to section 9.5(f) of FOIA.

ANALYSIS

"It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with [FOIA]." 5 ILCS 140/1 (West 2014). Under section 1.2 of FOIA (5 ILCS 140/1.2 (West 2014)), "[a]ll records in the custody or possession of a public body are presumed to be open to inspection or copying." Section 3(a) of FOIA (5 ILCS 140/3(a) (West 2014)) provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Sections 7 and 8.5 of this Act." Section 3(d) of FOIA further provides:

Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request. A public body that fails to respond to a

⁷E-mail from Lauren FitzPatrick, Education reporter, *Chicago Sun-Times*, to Sara[h] Pratt, * * * Public Access Counselor, Office of the Attorney General (August 1, 2016).

⁸It is questionable whether the automated e-mail sent by CPS purporting to extend the time for response by an additional five business days is proper under FOIA. Because Ms. FitzPatrick's Request for Review challenged only the lack of response by CPS, however, this office will not address the propriety of the extension in this opinion.

⁹Letter from Josh Jones, Supervising Attorney, Public Access Bureau, Office of the Attorney General, to Jaculin Jerman Milovich, Senior Assistant General Counsel, Chicago Public Schools, Law Department (August 4, 2016).

Ms. Lauren FitzPatrick
Ms. Jaculin Jerman Milovich
November 14, 2016
Page 4

request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).

Additionally, section 3(e) of FOIA (5 ILCS 140/3(e) (West 2014)) provides: "The person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties."

CPS has not disputed that it did not, within 10 business days after its receipt of Ms. FitzPatrick's FOIA request, comply with her request, deny her request in writing, or reach a written agreement with her to further extend its response time. CPS's failure to comply with the requisite procedures violated section 3(d) of FOIA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the information submitted, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On July 1, 2016, Ms. Lauren FitzPatrick, on behalf of the *Chicago Sun-Times*, submitted a FOIA request to CPS via the FOIA Center on its website, seeking certain records concerning Crowe Horwath LLP, including invoices, records of payments by CPS, and the most recent contract or engagement letter. CPS's FOIA Center generated an automatic response acknowledging the receipt of Ms. FitzPatrick's FOIA request and informing her that CPS was taking an extension of 5 business days pursuant to section 3(e)(vi) of FOIA. CPS did not, within 10 business days after its receipt of her request, however, comply with the FOIA request, reach a written agreement with Ms. FitzPatrick to further extend the time for its response pursuant to section 3(e) of FOIA, or deny the request in whole or in part, as is required by section 3(d) of FOIA. The failure to do so constituted a denial of the FOIA request.

2) On August 1, 2016, Ms. FitzPatrick asked the Public Access Counselor and the Public Access Bureau to review CPS's denial of her FOIA request. The Request for Review was timely filed and otherwise complies with the requirements of section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2014)).

3) On August 4, 2016, the Public Access Bureau forwarded a copy of Ms. FitzPatrick's Request for Review to CPS, together with a letter asking CPS to advise this office whether it had responded to Ms. FitzPatrick's July 1, 2016, FOIA request. CPS did not respond to that inquiry.

Ms. Lauren FitzPatrick
Ms. Jaculin Jerman Milovich
November 14, 2016
Page 5

4) Pursuant to section 9.5(f) of FOIA, this office properly extended the time for issuing a binding opinion by 30 business days to November 17, 2016. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

5) To date, this office has received no confirmation or indication that CPS has responded to Ms. FitzPatrick's request.

Therefore, it is the opinion of the Attorney General that CPS has violated section 3(d) of FOIA by failing, within 10 business days after receiving Ms. FitzPatrick's request, to provide the requested records, to reach a written agreement with Ms. FitzPatrick for an additional extension of time, or to deny the request in whole or in part. Accordingly, CPS is hereby directed to take immediate and appropriate action to comply with this opinion by providing Ms. FitzPatrick with all records responsive to her July 1, 2016, request, subject only to permissible redactions, if any, under section 7 of FOIA (5 ILCS 140/7 (West 2015 Supp.)).¹⁰ If CPS determines that any portion of the responsive records is exempt from disclosure under section 7, CPS is directed to issue a written denial that fully complies with the requirements of section 9(a) of FOIA (5 ILCS 140/9(a) (West 2014)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Ms. Lauren FitzPatrick as defendants. *See* 5 ILCS 140/11.5 (West 2014).

Sincerely,

LISA MADIGAN
ATTORNEY GENERAL

By:


Michael J. Luke
Counsel to the Attorney General

¹⁰Because CPS did not comply with the statutory requirements for responding to Ms. FitzPatrick's FOIA request, CPS is precluded from treating the request as unduly burdensome or imposing copying fees for the responsive records. 5 ILCS 140/3(d) (West 2014) ("A public body that fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. A public body that fails to respond to a request received may not treat the request as unduly burdensome under subsection (g).").

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-010) upon:

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Chicago, Illinois 60654
lfitzpatrick@suntimes.com

Ms. Jaculin Jerman Milovich
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1 North Dearborn, 9th Floor
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on November 14, 2016.


SARAH L. PRATT
Public Access Counselor

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